

Title of Rule: Revision to the Medical Assistance Eligibility Rule Concerning Allowing Medicaid Buy-In Program for Working Adults with Disabilities Members Access the HCBS-DD Waiver, Section 8.100.7.1.c.i
Rule Number: MSB 22-06-31-A
Division / Contact / Phone: Eligibility / Beverly Hirsekorn / 303-866-6320

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

The rule change amends 10 CCR 2505-10 Section 8.100.7.B.1.c.i to add the HCBS-DD waiver to the other waiver types that can be accessed when an individual is eligible under the Medicaid Buy-In Program for working Adults with Disabilities.

2. An emergency rule-making is imperatively necessary

- ☐ to comply with state or federal law or federal regulation and/or
☐ for the preservation of public health, safety and welfare.

Explain:

3. Federal authority for the Rule, if any:

A waiver amendment for HCBS-DD is in progress

4. State Authority for the Rule:

25.5-1-301 through 25.5-1-303, C.R.S. (2022);
25.5-6-1403(4)

Initial Review
Proposed Effective Date

10/14/22
12/30/22

Final Adoption
Emergency Adoption

11/18/22

DOCUMENT #01

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REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

The rule update will benefit enrolled members on the Medicaid Buy-In Program for Working Adults with Disabilities that also are functionally eligible for the HCBS-DD Waiver to be able to access both sets of services. Individuals that meet all other qualifying criteria including disability, employment and income limits will be able to work in more competitive employment at higher wages as well as accumulate more resources than would typically be allowed for a person just enrolled in a waiver. Resources are not considered for eligibility when a person is on the Medicaid Buy-In Program for Work Adults with Disabilities even when they also access waived services. There are no projected negative impacts to any classes of persons with this proposed rule change.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

The proposed rule to allow enrolled members on the Medicaid Buy-In Program for Working Adults with Disabilities to also access HCBS-DD waiver services will encourage those individuals that would choose to work in more competitive employment to seek out those jobs increasing opportunities for successful and dignified community living. Further this rule allows any adult waiver to be used in conjunction with the Working Adults with Disabilities Buy-In and does not discriminate due to the type or severity of disability.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

Approximately \$140.2M is spent on the Medicaid Buy-In Program for Working Adults with Disabilities annually. From September 2020 - August 2021, the average caseload was 13,390 and the per capita cost was \$10,471. This rule change is expected to shift participants from the HCBS-DD waiver program to the buy-in program with HCBS-DD. On net, this shift is expected to decrease costs by \$5,751 starting in FY 2022-23 (January 1, 2023 implementation), when it is assumed that HCPF will begin enrolling individuals in the buy-in program. While the developmental disabilities waiver program

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is financed with the General Fund, the new buy-in program will be funded through the Healthcare Affordability and Sustainability (HAS) Fee Cash Fund. Premiums for the buy-in program are not eligible for the 50 percent federal funds match. As such, the shift to a buy-in program with premiums results in a decrease in use of General Fund and federal funds, and an increase in HAS cash fund beginning in FY 2022-23 (January 1, 2023 implementation).

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

A HCBS-DD Waiver amendment is in progress to allow implementation no later than January 1, 2023. The Department was directed through the enactment of SB 21-039 to seek federal authorization to allow the HCBS-DD Waiver to be used in conjunction with the Medicaid Buy-In Program for Working Adults with Disabilities. The Department will be updating the Colorado Benefits Management System (CBMS) and InterChange System (MMIS) to allow this change to occur. This rule is popular with stakeholders in the Intellectual Disabilities and Developmental Disabilities communities because individuals can earn and save higher amounts of income to live more independently with dignity and contribute back to society. It is possible that representatives of those communities may choose to testify in favor of this change. Collaboration has occurred with the Office of Community Living to ensure that Waiver amendments are in sync with the rule change. Staff has been very supportive of this effort. There has not been any negative response from any sector.

The costs of inaction would be non-compliance with State Statute.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

There are no less costly methods of implementing SB 21-039

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

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There were no alternative methods considered for the proposed rule.

8.100 MEDICAL ASSISTANCE ELIGIBILITY

8.100.7 Long-Term Care Medical Assistance Eligibility

8.100.7.B. Persons Requesting Long-term Care through Home and Community Based Services (HCBS) or the Program of All Inclusive Care for the Elderly (PACE)

1. HCBS or PACE shall be provided to persons who have been assessed by the Single Entry Point/Case Management Agency to have met the institutional level of care and will remain in the community by receiving HCBS or PACE; and
 - a. are SSI (including 1619b) or OAP Medicaid eligible; or
 - b. are eligible under the Institutionalized 300% Special Income category described at 8.100.7.A; or
 - c. are eligible under the Medicaid Buy-In Program for Working Adults with Disabilities described at 8.100.6.P. For this group, access to HCBS:
 - i) Is limited to the Elderly, Blind and Disabled (EBD), Community Mental Health Supports (CMHS), Brain Injury (BI), Spinal Cord Injury (SCI), ~~and~~ Supported Living Services (SLS), and Developmental Disabilities waivers; and
 - ii) Is contingent on the Department receiving all necessary federal approval for the waiver amendments that extend access to HCBS to the Working Adults with Disabilities population described at 8.100.6.P.
2. A client who is already Medicaid eligible does not need to submit a new application. The client must request the need for Long-Term Care services and the Eligibility Site must redetermine the client's eligibility.
 - a. All individuals applying for or requesting Long-Term Care services must disclose and provide documentation of:
 - i) any transfer of assets without fair consideration as described at 8.100.7.F; and
 - ii) any interest in an annuity as described at 8.100.7.I; and
 - iii) any interest in a trust as described at 8.100.7.E.

1 b. Failure to disclose and provide documentation of the assets described at 8.100.7.B.2.a
2 may result in the denial of Long-Term Care services.

3 c. The requirements at 8.100.7.B.2.a and 8.100.7.B.2.b do not apply to individuals who
4 have been determined eligible under the Medicaid Buy-In Program for Working Adults
5 with Disabilities described at 8.100.6.P.

6 3. For individuals served in Alternative Care Facilities (ACF), income in excess of the personal
7 needs allowance and room and board amount for the ACF shall be applied to the Medical
8 Assistance charges for ACF services. The total amount allowed for personal need and room and
9 board cannot exceed the State's Old Age Pension Standard.

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